

TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF:

EB DOCKET NO. 03-241

ROGER THOMAS SCAGGS

FCC-0ALJ RCD
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DATE OF HEARING: JANUARY 21, 2004

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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of:

ROGER THOMAS SCAGGS

EB Docket No. 03-241

Advanced Class Amateur Radio
Operator and Licensee of
Amateur Radio Station W5EBC

File No. EB-02-IH-0886

Hearing Room TW-A363
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C.

Wednesday
January 21, 2004

The above-entitled matter came on for
conference, pursuant to notice at 9:00 a.m.

BEFORE:

THE HONORABLE ARTHUR STEINBERG, JUDGE

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WASHINGTON, D.C. 20005-3701

APPEARANCES:

On Behalf of the Federal Communications
Commission:

GARY A. OSHINSKY

JAMES W. SHOOK

of: Federal Communications Commission
Enforcement Bureau
445 12th Street, SW
Washington, DC 20554
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I-N-D-E-X

Opening Statements by:

none.

Closing Statements by:

none.

<u>Exhibit No.</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
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none.

Hearing Began: 9:00 a.m. Hearing Ended: 9:10 a.m.

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P-R-O-C-E-E-D-I-N-G-S

9:00 a.m.

JUDGE STEINBERG: Okay. We're on the
record now.

This is a pre-hearing conference in EB
docket number 03-241 which was designated for
hearing by Order to Show Cause DA03-3738 released
November 21, 2003.

The issues in this proceeding seek to
determine the effect of the felony conviction of
Roger Thomas Scaggs on his qualifications to be and
to remain a commissioned licensee and to determine
whether his amateur radio advanced class license for
station W5EBC should be revoked.

By order FCC 03M-51 released December
4th, 2003, the Chief Administrative Law Judge
assigned this case to me and scheduled the initial
pre-hearing conference for this morning.

And let me take the appearances first.

On behalf of Roger Thomas Scaggs?

(No response)

JUDGE STEINBERG: Let the record reflect

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1 no response.

2 On behalf of the Chief Enforcement
3 Bureau?

4 MR. OSHINSKY: Your Honor, Gary Oshinsky
5 for the Enforcement Bureau.

6 JUDGE STEINBERG: Okay. And, Mr. Shook,
7 are you entering an appearance?

8 MR. SHOOK: Yes, sir.

9 JUDGE STEINBERG: Okay. And you have to
10 say Mr. Shook's name, too.

11 MR. OSHINSKY: Oh. And Mr. James Shook
12 as co-counsel.

13 JUDGE STEINBERG: Okay. And you don't
14 have to stand up, because this is just the FCC, it's
15 not real court.

16 MR. OSHINSKY: Okay.

17 MR. SHOOK: Because that was one aspect
18 of protocol I didn't discuss with Mr. Oshinsky
19 beforehand.

20 JUDGE STEINBERG: Okay. We do pretend
21 law here. Pretend law is law made up by the
22 Commission since 1934 as amended.

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1 MR. OSHINSKY: That's good law.

2 JUDGE STEINBERG: Anyway, let the record
3 reflect sarcasm.

4 Okay. The Order to Show Cause, I
5 believe, was mailed to Mr. Scaggs by certified mail,
6 return receipt requested. And it's my understanding
7 that the return receipt came back to the Commission.
8 Is that correct, Mr. Oshinsky?

9 MR. OSHINSKY: Yes, that's correct, Your
10 Honor.

11 JUDGE STEINBERG: And then you got a
12 copy of it?

13 MR. OSHINSKY: Yes, I do, Your Honor.

14 JUDGE STEINBERG: Okay. And the Order
15 to Show Cause, it was received by Mr. Scaggs because
16 he sent a letter, dated December 29, 2003 to David
17 Solomon, Chief of the Commission's Enforcement
18 Bureau. Is that correct?

19 MR. OSHINSKY: That's correct, Your
20 Honor.

21 JUDGE STEINBERG: Okay. And Mr.
22 Oshinsky provided me with a copy of the letter a

1 couple of weeks ago.

2 No notice of appearance has been filed
3 on behalf of Mr. Scaggs, at least I couldn't find
4 any. And have you been able to find any, Mr.
5 Oshinsky?

6 MR. OSHINSKY: No, Your Honor.

7 JUDGE STEINBERG: Okay. And I think it
8 would have shown up by now. Indeed, in Mr. Scaggs'
9 December 19th letter he states that he cannot appear
10 for the hearing in this matter because he's
11 incarcerated and he requests that the Commission
12 consider his written response, which I assume is the
13 letter. Would you assume the same thing?

14 MR. OSHINSKY: That's the way I
15 understand it.

16 JUDGE STEINBERG: Okay. In the letter
17 Mr. Scaggs recites the reasons why he believes he
18 has the requisite character qualifications to remain
19 a Commission licensee, and he urges that his license
20 not be revoked. And I'm not going to get into those
21 reasons this morning because I don't really have to.

22 Section 1.91(c) of the Commission's

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1 Rules as well as Paragraph 7 of the Order to Show
2 Cause in this proceeding required Mr. Scaggs to file
3 a written appearance stating that he will appear at
4 the hearing and present evidence on the matters
5 specified in the Order to Show Cause.

6 In my view, Mr. Scaggs' letter to Mr.
7 Solomon does not constitute a notice of appearance.
8 On the contrary, rather than stating that he will
9 appear and present evidence at the hearing, Mr.
10 Scaggs has specifically stated that he will not
11 appear. Well, he can't physically appear because
12 he's incarcerated, but if he wished he certainly
13 could appear through counsel.

14 Anyway, I believe that Mr. Scaggs'
15 letter is akin to the written statement which is
16 contemplated in Section 1.82(b) of the Commission's
17 Rules which, under certain circumstances, gives
18 individuals who face revocation an opportunity to
19 submit a written statement seeking to mitigate or
20 justify the conduct contemplated in the Order to
21 Show Cause.

22 Do you agree with my assessment that the

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1 letter doesn't constitute a notice of appearance?

2 MR. OSHINSKY: Your Honor, in this
3 instance we'd defer to Your Honor's opinion about
4 it. We wouldn't object to it, but we would defer to
5 the Court.

6 JUDGE STEINBERG: Okay. In these
7 circumstances, under Section 1.92(a)(1) of the
8 Commission's Rules as well as Paragraph 8 of the
9 Order to Show Cause, I'm going to hold that the
10 failure to file the requisite notice of appearance
11 constitutes a waiver of the right to a hearing.

12 And inasmuch as I'm ruling in that way,
13 pursuant to Section 1.92(c) of the Rules and
14 Paragraph 8 of the Order to Show Cause, I'm going to
15 issue an order reciting the events and circumstances
16 constituting the waiver of the hearing. The order
17 is going to terminate the proceeding and it's going
18 to certify the case to the Commission.

19 Do you have any comments on that, Mr.
20 Oshinsky?

21 MR. OSHINSKY: No, Your Honor. I don't
22 think so.

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1 JUDGE STEINBERG: Okay. And do you have
2 any objections to me doing that?

3 MR. OSHINSKY: No, Your Honor.

4 JUDGE STEINBERG: Okay. Is there
5 anything further we have to talk about this morning?

6 MR. OSHINSKY: In light of Your Honor's
7 decision, I don't think so.

8 JUDGE STEINBERG: Okay. So that's it.

9 Once the order is issued, the case will
10 be terminated and certified to the Commission. I'm
11 going to, obviously, recite in the order the fact
12 that Mr. Scaggs sent the letter to Mr. Solomon. And
13 if the Commission wants to consider that letter,
14 it's up to them to consider the letter.

15 And, again, if the Commission wants to
16 give Mr. Scaggs the opportunity -- he says in his
17 letter he wants to submit letters certifying to his
18 good character and one was attached in his letter.
19 And, of course, the letter of good character says
20 nothing about his conviction of a felony, and so
21 that might be something that could be addressed in
22 cross examination if we ever got that far.

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1 But anyway, if the Commission wants to
2 give Mr. Scaggs an opportunity to submit more
3 letters, it's up to the Commission to do that. But
4 it's not my role, I don't believe.

5 Okay. With that being said, we'll
6 conclude the conference.

7 I thank you all for appearing. I
8 appreciate it. And I enjoyed the opportunity to get
9 out of the office. Thank you.

10 MR. OSHINSKY: And thank you, Your
11 Honor.

12 JUDGE STEINBERG: We can go off the
13 record now.

14 (Whereupon, at 9:10 a.m. the pre-hearing
15 conference was concluded.)
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

ROGER THOMAS SCAGGS

Name of Hearing

EB DOCKET NO. 03-241

Docket No. (if applicable)



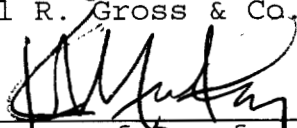
WASHINGTON, D.C.

Place of Hearing

JANUARY 21, 2004

Date of Hearing

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